



**MINUTES  
FREMONT PLANNING COMMISSION  
REGULAR MEETING OF FEBRUARY 12, 2004**

CALL TO ORDER: Chairperson Weaver called the meeting to order at 7:00 p.m.

PRESENT: Chairperson Weaver, Vice Chairperson Wieckowski, Commissioners Harrison, King, Lydon, Natarajan, Sharma

ABSENT: None

STAFF PRESENT: Jeff Schwob, Interim Planning Director  
Larissa Seto, Senior Deputy City Attorney II  
Kathleen Livermore, Senior Planner  
Nancy Minicucci, Associate Planner  
Vik Slen, Planner I  
Alice Malotte, Recording Clerk  
Chavez Company, Remote Stenocaptioning  
Walter Garcia, Video Technician

APPROVAL OF MINUTES: Regular Minutes of January 22, 2004 were approved with the following correction:  
Page 19, paragraph 6: "The Revenue Officer should be a part of the . . ."  
  
**Interim Planning Director Schwob** stated that a footnote by the Recording Clerk had been removed.

**CONSENT CALENDAR** None

**PUBLIC COMMUNICATIONS**

**ORAL COMMUNICATIONS**

**PUBLIC HEARING ITEMS**

**Item 1.** **LINCOLN STREET HOUSING – 40852 Lincoln Street – (PLN2004-00124)** – to consider a Rezoning from R-G-29 to R-3-18 for consistency with the City's certified Housing Element to provide the opportunity for the development of a multi-family housing project in the Irvington Planning Area. A Mitigated Negative Declaration has been prepared for this project. (Continued from January 22, 2004.)

**Interim Planning Director Schwob** recalled that this item had been continued due to a noticing error. Project design aspects would be heard later in the process by the Commission if the project contained eleven or more units or by staff if it contained ten or less for review. Staff clearly understood that the neighbors had design concerns, as expressed at the last meeting.

**Jamie Blackson Baker**, Housing Consortium of the East Bay, explained that this project was in the early stages of development. Eleven affordable apartments for people with developmental disabilities was being proposed. Two community meetings had been held with schematic drawings available for view. She had spoken to Ed Pentaleri several times since the last meeting to ascertain his concerns. She promised a building would be designed that met all the needs of the community. The rezoning was very important, because they planned to apply for affordable housing funding this spring and it would bring points for readiness towards 1.3 million dollars in needed funding.

**Commissioner Sharma** asked if the applicant was sure that eleven units would be built. He asked if she had an objection to removing the word “anticipated” from the report, so that it read that eleven units would be constructed.

**Ms. Blackson Baker** stated that financing had been promised from the U.S. Department of Housing and Urban Development for eleven units. It would be cumbersome and difficult to change that number. She agreed that “anticipated” could be removed.

**Commissioner Natarajan** noted the report stated that the applicant might ask for a density bonus and other incentives. She asked what the “other incentives” might be. Did the applicant have anything concerning the design that she could share with the Commission?

**Ms. Blackson Baker** replied that the incentives had not been decided, but they would work with staff to identify them later in the process. She had no building design drawings with her, as she was focusing on the rezoning at this point. She reiterated that she planned to meet with the community to design a project that would meet their needs.

**Vice-Chairman Wieckowski** supported staff’s recommendation. He shared Commissioner Sharma’s wish to have the eleven units built, rather than less. However, he did not want to add to the regulations she had to face to obtain funding, especially if the funding disappeared and something else had to be planned. He asked that the Commission be updated, occasionally, about how the funding was going.

**Ms. Blackson Baker** replied that they had the HUD award and they planned to apply for funding through the county, the Federal Home Loan Bank and the state.

**Chairperson Weaver** opened the public hearing.

**Al Minard**, Fremont resident, stated that he had initial concerns about this development going into an historic neighborhood. The Hiram Davis house was across the property line and included development that fit well into the historic community. He believed that this project would set guidelines for future projects in the area. He asked that historical integrity be incorporated into the developments, i.e., window surrounds, rooflines and porches, that were sympathetic to an historic environment. He asked that no matter the number of units in this development, it come back to the Planning Commission for site and design review.

**Ed Pentaleri**, High Street resident, stated that he had attended the community meeting held in January and that he supported the change of zoning and the new development in his neighborhood. However, he had concerns about the architectural concepts that had been presented during the community meeting. He appreciated their effort to walk the neighborhood with him in an attempt to understand the concerns that he and his neighbors had. He believed that there were “thousands of right answers” from which to choose that would assure a successful project was created.

**Commissioner King** asked staff to address the speaker’s concerns.

**Interim Planning Director Schwob** stated that he had no comments, since he had not seen the design of the building. That issue before the Commission, tonight, was the zoning change. The architecture would come back for review.

**Commissioner King** asked if the issue of whether the Commission saw the project again (if it was less than eleven units) should be taken up at this meeting.

**Interim Planning Director Schwob** replied that the ordinance was structured to allow ten or fewer units to be reviewed by staff and projects with more units to be reviewed by the Planning Commission. This ordinance had been changed to eliminate obstacles and to streamline the development process. Because this project had a density bonus at ten or more units, it might still need to be reviewed by the Commission for approval. Regardless of who reviewed the design, staff understood the surrounding neighborhood's concerns and would work very closely with the applicant to assure that the neighborhood's interests were met.

**Ms. Blackson Baker** closed by stating she expected to design a project that was a "gem for the neighborhood" and everyone would feel it was a valuable asset to the neighborhood.

**Commissioner Harrison** asked if she supported a project that would respect the historic integrity of the community.

**Ms. Blackson Baker** replied, "Absolutely. We look forward to working with the community."

**Chairperson Weaver** closed the public hearing.

**Commissioner Sharma** stated that he would like the word "affordable" housing to be changed to something else, as affordable meant many things. He believed that many "affordable" homes were not truly affordable to the average homebuyer. He asked, again, if the word "anticipated" could be removed to ensure that eleven units would be built.

**Interim Planning Director Schwob** replied that the point of the Housing Element was to provide for as many different kinds of housing as possible and to eliminate as many "governmental constraints" as possible. This was a straight rezoning that would allow any kind of housing on the site and would not require one type or another. There was no guarantee that this project would come forward exactly as it was imagined or "anticipated" at this time.

**Commissioner Natarajan** asked if this project would be heard by the Historical Architectural Review Board (HARB). She asked if the project became ten units or less, could this applicant be encouraged to address the issues of aesthetics through a community meeting.

**Interim Planning Director Schwob** replied that this project was not required to be reviewed by HARB, as it was not a designated primary historic resource. He agreed that another community meeting would be a good idea.

**Commissioner Natarajan** agreed with the speakers. This was a historic district with many historic elements. She cautioned the applicant and her architect about making this project a "Disneyfied" version of historic preservation. The project should incorporate some of the neighborhood architectural elements, but, at the same time, it should be contemporary enough that one would know in which year it was built.

IT WAS MOVED (KING/NATARAJAN) AND CARRIED BY THE FOLLOWING VOTE (7-0-0-0-0) THAT THE PLANNING COMMISSION **HOLD PUBLIC HEARING**;

AND  
STRONGLY ENCOURAGE THAT A COMMUNITY MEETING BE HELD TO INSURE THAT ALL THE NEIGHBORS' CONCERNS ARE ADDRESSED WITH REGARD TO ARCHITECTURAL DESIGN;

AND  
RECOMMEND TO THE CITY COUNCIL THAT THE INITIAL STUDY CONDUCTED FOR PLN2004-00124 HAS EVALUATED THE POTENTIAL IMPACTS FOR THIS PROJECT THAT COULD CAUSE AN ADVERSE EFFECT -- EITHER INDIVIDUALLY OR CUMULATIVELY -- ON WILDLIFE RESOURCES AND FIND THAT THERE IS NO EVIDENCE THE PROPOSED PROJECT WOULD HAVE ANY POTENTIAL FOR ADVERSE EFFECT ON WILDLIFE RESOURCES;

AND  
RECOMMEND TO THE CITY COUNCIL THE ADOPTION OF DRAFT MITIGATED NEGATIVE DECLARATION PLN2004-00124, FINDING THAT IT REFLECTS THE INDEPENDENT JUDGMENT OF THE CITY OF FREMONT, AND FINDING THERE IS NO SUBSTANTIAL EVIDENCE THAT THE PROJECT, AS MITIGATED, WILL HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT;

AND  
RECOMMEND TO THE CITY COUNCIL APPROVAL OF THE MITIGATION MONITORING PLAN FOR PLN2004-00124;

AND  
FIND PLN2004-00124 IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S EXISTING GENERAL PLAN. THESE PROVISIONS INCLUDE THE DESIGNATIONS, GOALS AND POLICIES SET FORTH IN THE GENERAL PLAN'S LAND USE AND HOUSING ELEMENT CHAPTERS AS ENUMERATED WITHIN THE STAFF REPORT;

AND  
RECOMMEND PLN2004-00124 TO THE CITY COUNCIL IN CONFORMANCE WITH EXHIBIT "A". (REZONING EXHIBIT)

The motion carried by the following vote:

AYES:	7 – Harrison, King, Lydon, Natarajan, Sharma, Weaver, Wieckowski
NOES:	0
ABSTAIN:	0
ABSENT:	0
RECUSE:	0

**Item 2. AMUSEMENT OR GAME DEVICES AND ARCADES – Citywide – (PLN2004-00004)** – to consider a Zoning Text Amendment to allow amusement or game arcades less than 1,200 square feet in size in C-N Neighborhood Commercial Districts, subject to a Zoning Administrator Permit. Staff also proposes to modify definitions and special provisions (operational standards) applying to amusement or game devices and arcades in all districts for consistency. The changes would affect Fremont Municipal Code Sections 4-6102, 5-1206, 8-2106.1, 8-2106.2, 8-21002, 8-21004, 8-21102, 8-21103, 8-21103.1, 8-21202, 8-21203, 8-21204, 8-21302, 8-21303, 8-21312, 8-21313, 8-21412, 8-21414, 8-21502, 8-21503.1, 8-21602, 8-21603 and 8-22130.5. This project is categorically exempt under Section 15303 of the CEQA Guidelines pertaining to new construction and conversion of small facilities. (Continued from January 22, 2004.)

**Interim Planning Director Schwob** informed the Commission that fees normally were not the purview of the Planning Commission. The Development and Environmental Services fee and deposit structure would be updated later this spring. A memo would be circulated about the findings to allow the Commission to make a recommendation on this particular issue. The applicant had to make a decision about a lease arrangement and a decision by the Commission to move the text zoning amendment would be appreciated.

**Interim Planning Director Schwob** stated that the fee was 25 dollars per device up to a certain threshold. Staff had not collected all the data yet. However, the total dollar amount collected by the City had been “not that much” and it seemed that some facilities were collected from and some where not. It was not a matter of enforcement; it was a matter of collecting.

**Vice-Chairman Wieckowski** noted that the Police Department had proposed changes in the Standards under Principal vs Accessory Use under Section 5 of Exhibit A. He asked the basis for this body to make a finding that the changes were necessary, i.e., “No employee shall be under the age of 16 years old,” when a bowling alley might employ a 15 year old. Was the requirement concerning the posting of “No Loitering” signs appropriate?

**Interim Planning Director Schwob** replied that he was uncertain about the minimum age of 16 years old. The manager had to be a legal adult, which was age 18 or older. The municipal code addressed when and how “No Loitering” signs were to be placed.

**Commissioner Harrison** wondered if a curfew could be the reason for not allowing anyone under 16 to work at this kind of business establishment.

**Planner Slen** replied that staff had considered not allowing this kind of business to be open during school hours or later than curfew, which the Police Department had asked for, but Code Enforcement believed it would not be appropriate. It had also asked that all employees be 18 or older. He understood that 16 was the minimum age allowed to work without special permit.

**Vice-Chairman Wieckowski** believed that MacDonald’s hired people younger than 16 years of age. He felt that data should be available for the Commission to make findings concerning the Police Department’s requests. He noted that it was common for restaurants to have people waiting outside the restaurant to enter. Was this kind of restriction placed on other commercial establishments?

**Planner Slen** replied that amusement arcades, historically, were places where young people gathered and the age of the employee was directly related to the authority the employee would have with dealing with such a group.

**Interim Planning Director Schwob** stated that similar conditions had been placed on a case-by-case basis. These conditions were based upon the Police Department’s experience with this type of facility. The basis was the age of the crowd, the congregating and the result of these.

**Vice-Chairperson Wieckowski** was uncomfortable with being asked to adopt these kinds of citywide restrictions without more information.

**Commissioner Natarajan** asked if the these standards could be part of the Conditions of Approval when applying for a Zoning Administrator permit rather than part of the ordinance.

**Planner Slen** replied that it was felt that applicants for arcades would have a better idea of what to expect if these standards were part of the ordinance.

**Commissioner Sharma** asked what the pressing reason was for changing the ordinance now. When he visited the applicant’s current business site, he saw nothing of what would be required under this ordinance as it was being presented. For example, the windows were dark and covered. He wished that some parents of the potential young customers of this business had attended this hearing, so that the Commissioners could hear from them. Could one expect that, with these changes, this kind of business would locate in every neighborhood commercial area?

**Planner Slen** stated that one other similar business had applied to be allowed to locate in a Neighborhood Commercial District and one other was already located in a Neighborhood Commercial District.

**Commissioner Sharma** approved of the proposed clarifications and suggested that arcades not be allowed in neighborhood commercial districts, as had always been the case.

**Interim Planning Director Schwob** replied that if the Commission did not feel this kind of business was appropriate in the Neighborhood Commercial zone, the changes could still be approved and this kind of business would be restricted to other zoning areas. In this case, the applicant would have to relocate to another zoning district, along with the other establishment who would be notified that it was in violation of the zoning code.

**Commissioner Sharma** asked if, to our knowledge, this would affect just these two small businesses.

**Interim Planning Director Schwob** agreed.

**Commissioner King** agreed with the police department's recommendations, which seemed reasonable. It was common sense that certain problems could be created with many young people congregating at such a business, although he had not visited this particular site. He understood that a decision needed to be reached by the Commission, because the applicant had to make a lease decision by the end of the month.

**Interim Planning Director Schwob** stated that he was correct. He clarified that, whereas, the applicant's establishment did not currently meet many of these criteria, his establishment would be required to be brought into conformance as a condition of the Zoning Administrator Permit. For example, the window tinting and blinds would have to be removed to meet City ordinances.

**Commissioner Harrison** recalled Commissioner Lydon's comments at the last meeting about this being uncharted waters. He would feel better erring on the side of the Police Department who would have to deal with any problems at 2:00 a.m. Concerning the minimum age of the employees, this could be a young teenager who might have to be responsible for 20 people late at night rather than someone flipping hamburgers under adult supervision. He would support the proposal and allow the applicant to move forward.

**Vice-Chairman Wieckowski** believed that the Commission "was picking on an internet industry" and the applicants who were willing to take chances with new businesses in old shopping centers and who might help to rejuvenate these shopping centers. It was not fair that these Standards were being introduced because trouble was anticipated, although there was no information to prove that "this bad activity was going to go on." The police should be able to do their job with the laws that were already on the books. There was no reason why the Standards could not be changed at a later date, if problems occurred.

**Commissioner Natarajan** asked if there was a reason why this kind of business was not allowed in the CO Districts.

**Planner Slen** stated that no amusements were allowed in the Office Zoning Districts.

**Commissioner Natarajan** believed this kind of business should be allowed in the CN Districts, especially since it was allowed in the CC and the CBD Districts. Was there a possibility of putting a distance separation between such uses?

**Assistant City Attorney Seto** suggested that if the Commission was interested in pursuing that type of distance separation, staff could work with the Police Department concerning crime reporting (and other things) to find out if a concentration of these types of uses created secondary negative affects. Absent that kind of information, she would not recommend that the Commission move forward concerning distance separation at this time.

**Commissioner Natarajan** replied that if distance separation could not be done at this time, she would support the project.

**Commissioner Lydon** sensed that the applicant was in concert with the proposed Standards. He, like Vice-Chairperson Wieckowski, did not want to discourage this cutting edge kind of business, which he believed would benefit the young people in the community. He was willing to go with the Police Department recommendations.

**Chairperson Weaver** noted that if this amendment passed and the applicant did not agree to the conditions, he would still have to relocate.

IT WAS MOVED (HARRISON/KING) AND CARRIED BY THE FOLLOWING VOTE (6-1-0-0) THAT THE PLANNING COMMISSION HOLD PUBLIC HEARING;

**AND**

**FIND PLN2004-0004 IS CATEGORICALLY EXEMPT FROM REVIEW UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT PER SECTION 15303 OF THE CEQA GUIDELINES (CLASS 3) PERTAINING TO NEW CONSTRUCTION AND CONVERSION OF SMALL FACILITIES;**

**AND**

**FIND PLN2004-00004 IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S GENERAL PLAN. THESE PROVISIONS INCLUDE THE DESIGNATIONS, GOALS AND POLICIES SET FORTH IN THE GENERAL PLAN'S LAND USE CHAPTER AS ENUMERATED IN THE STAFF REPORT;**

**AND**

**FIND THE PUBLIC NECESSITY, CONVENIENCE AND GENERAL WELFARE REQUIRE THE ADOPTION OF THIS ZONING TEXT AMENDMENT PLN2004-00004 IN ORDER TO ACCOMMODATE THE NEEDS OF USERS OF COMPUTER GAME CENTERS AND OTHER AMUSEMENT ARCADES WHILE ENHANCING THEIR SUITABILITY AS AN ENVIRONMENT FOR YOUNG PEOPLE AND MITIGATING THEIR IMPACTS OF ON SURROUNDING USES;**

**AND**

**RECOMMEND PLN2004-00004 TO THE CITY COUNCIL IN CONFORMANCE WITH EXHIBIT "A" (ZONING TEXT AMENDMENT);**

**AND**

**RECOMMEND TO THE CITY COUNCIL ADOPTION OF A GRACE PERIOD GIVING EXISTING ARCADE BUSINESSES UNTIL JULY 1, 2004 TO APPLY FOR A USE PERMIT.**

The motion carried by the following vote:

AYES:	6 – Harrison, King, Lydon, Natarajan, Sharma, Weaver
NOES:	1 – Wieckowski
ABSTAIN:	0
ABSENT:	0
RECUSE:	0

**Chairperson Weaver** called for a recess at 7:50 p.m.

**Chairperson Weaver** reconvened the meeting at 8:05 p.m.

**Item 3. CAROL COMMONS – 41482 Fremont Boulevard – (PLN2003-00018)** – to consider a Preliminary & Precise Planned District for a 20-unit condominium development located in the Irvington Planning Area. A Mitigated Negative Declaration has been adopted as part of the General Plan Amendment approved under PLN2003-00018.

**Roger Shanks**, representing the applicant and the architect, described this project that was on .95 acres. The two, three, and four-bedroom units ranged in size from 1400 to 2400 square feet and included three affordable two-bedroom units. Fifty percent of the lot would be open space with gated, podium parking under the building. Each unit would have a two-car garage with lockable storage and access directly from the garage to the unit. Ten guest parking spaces would be provided on the east side of the property at grade. The twelve, three-bedroom units would have front patios with trellises. A rear yard in the middle of the building would provide an area for outdoor activities. The building would be broken up to look like individual residences with usable front porches and would be oriented to Carol Avenue, Fremont Boulevard and to the existing condominium project to the north.

**Vice-Chairman Wieckowski** asked why the affordable units could not be sprinkled throughout the project and include one of each of the two, three and four-bedroom units.

**Consultant Shanks** replied that part of the reason that all the affordable units would be two bedrooms was cost. The podium parking added substantial cost to the project. The four, four-bedroom units would accommodate families.

**Vice-Chairperson Wieckowski** understood that every developer would prefer to offer the smaller, less expensive units as affordable units. He asked if changing some of the affordable units to larger than two bedrooms would be prohibitive. Given that the public areas would be in front of the units and everyone would have their own parking spaces, he asked if the homeowners association could be eliminated.

**Consultant Shanks** replied that it was questionable that the project could be constructed if more cost was taken on. The ordinance required that any development of 20 units or more have a homeowners association, which was a practical way to provide maintenance for the buildings, open space areas and streets.

**Vice-Chairperson Wieckowski** expressed concern about the actions of some homeowners associations, as he was aware of homeowners who had lost their homes because of actions taken by homeowners associations. These associations were provided unusual rights at this stage of the process. He stated that he would like to review the aspects of homeowner associations at another time to ascertain if it was beneficial to the community to continue requiring them with all condominium projects.

**Assistant City Attorney Seto** stated that the common areas, drainage maintenance of the parking structure, security gates, etc., needed a professional homeowners association to own and maintain the common areas.

**Interim Planning Director Schwob** replied that when the code was most recently modified, many provisions for condominiums were eliminated, with the exception of the requirement for a homeowners association when 20 or more units were involved.

**Vice-Chairman Wieckowski** asked for a description of the landscaping at the four-foot podium. Were the trellises supposed to catch the eye so that the full building façade was not noticed?

**Consultant Shanks** stated that the planting would not be on a slope, but would consist of lawn in front, a landscaped terrace with a tree in the center and then the actual patio level.



The intent was to reduce the impact of the four-foot podium, which would allow for parking to be semi depressed. Staff had suggested that lawn be planted right up to the patio.

**Commissioner King** stated that it was a lovely project and more attractive than many existing developments in the City. He appreciated Vice-Chairman Wieckowski's comments, as he also knew of people who had experienced problems with homeowners associations. In his opinion, the potential for problems without a homeowners association was greater than with an association. He would approve the project.

**Commissioner Sharma** asked if any other design had been worked out for the garage door. He asked the prices of the below market units versus the market rate unit.

**Consultant Shanks** stated that the garage door would roll up and would be made of color-finished metal that would blend with the building and provide something other than a raw metal look. The three affordable units would be sold for approximately 270,000 dollars versus approximately 480,000 dollars for the market rate unit.

**Chairperson Weaver** opened the public hearing.

**Commissioner Harrison** asked if something could be done to lower the cost of the homeowners association fee with regard to the affordable units.

**Assistant City Attorney Seto** replied that the homeowners association cost and the annual housing expenses were taken into consideration when figuring the price of the affordable unit.

**Commissioner Harrison** asked if future assessments for affordable units would be equal to the market rate units or would a reduced assessment be factored into the calculation.

**Assistant City Attorney Seto** replied it would not. However, if, for example, flood damage occurred and an emergency assessment was made, each unit would receive their fair share assessment.

**Al Minard**, Fremont resident, stated that this complex was directly across the street from one of the City's recently restored, beautiful, Victorian homes. He was comfortable with the front of the units and their porches facing the Victorian home. He agreed with the comment about the garage doors. When driving through the city, one could see very garish garages that "jump out at you," which was counterproductive to a good development.

**Consultant Shanks** thanked the Planning Commission for its consideration and asked for approval.

**Chairperson Weaver** closed the public hearing.

**Commissioner Natarajan** noted the planned district was before the Commission for approval and asked if the grading plan would come back with a tentative tract map at a later time. She asked if the three drawings were information, only.

**Associate Planner Minicucci** stated that she was correct.

**Commissioner Natarajan** considered this a great project. It had everything that an urban infill project was supposed to include, such as individual units addressing the street, the look of individual units, and it had enough articulation and detailing, as well. The podium parking was a wonderful step in the right direction. She agreed with staff's suggestion that the lighting be more pedestrian scaled. She encouraged staff to continue to work with the applicant on the garage door, the fence and bioswale details, which she asked be brought

back to the Commission with the final landscape plan. She asked what an improvement plan was, as mentioned in Condition D-5.

**Interim Planning Director Schwob** replied that Condition D-5 concerned the construction plans for the public improvements along the street and they would be reviewed by staff.

**Commissioner Natarajan** encouraged the applicant to address the corner element a little more and she agreed that the landscape terrace should be flat rather than sloped. She suggested planting something with color. The wood brackets should be increased and used as a substantial element throughout the building.

**Commissioner King** stated that he was ready to make a motion to approve staff's recommendations.

**Vice-Chairman Wieckowski** asked what Condition E-5, the six-foot wide, private service easement was.

**Interim Planning Director Schwob** stated that the public utilities easement had been renamed to private utilities, because it was on private property, but would be for utilities.

**Vice-Chairman Wieckowski** stated that he, too, liked the project and noted that this was the first project with the inclusionary affordable housing element. However, he worried about precedent being set if only the smallest units were allowed to be affordable. He would like to make a friendly amendment that one of the three-bedroom units become an affordable unit.

**Commissioner King** asked to that the Commission allow the applicant to respond.

**Chairperson Weaver** reopened the public hearing.

**Consultant Shanks** replied that the project would be financially impacted by several hundred thousand dollars if one of the affordable units was a three-bedroom unit, as the market rate was expected to be about mid-500,000 dollars.

**Chairperson Weaver** asked if Commissioner King would accept the "friendly amendment."

**Commissioner King** declined to incorporate the amendment into his motion.

**Chairperson Weaver** asked staff to consider a variety of unit sizes that could be included in the affordable housing element.

**Assistant City Attorney Seto** stated that the Director of Housing Issues with the Office of Housing and Redevelopment had supported the three, two-bedroom units as affordable. As the number of bedrooms increased, the estimated household size increased and the estimated annual income also increased.

**Interim Planning Director Schwob** recalled that the developer for the approved project at Central Avenue and Fremont Boulevard had podium style parking and was having trouble finding financing. He was considering coming back to the Commission with a new project that had two additional units in order to "make the project pencil."

**Commissioner Sharma** assumed that the affordable element would help the City to meet its goal for the lower end of the affordable housing complement.

**Assistant City Attorney Seto** stated that the for-sale housing was targeted toward the moderate levels and the rental developments were targeted toward the low and very low income levels.

IT WAS MOVED (KING/HARRISON) AND CARRIED BY THE FOLLOWING VOTE (7-0-0-0) THAT THE PLANNING COMMISSION HOLD PUBLIC HEARING;

**AND**

**RECOMMEND THE CITY COUNCIL FIND THE PREVIOUS INITIAL STUDY HAS EVALUATED THE POTENTIAL FOR THIS PROJECT TO CAUSE AN ADVERSE EFFECT – EITHER INDIVIDUALLY OR CUMULATIVELY – ON WILDLIFE RESOURCES, AND NO NEW IMPACTS HAVE BEEN IDENTIFIED. THERE IS NO EVIDENCE THE PROPOSED PROJECT WOULD HAVE ANY POTENTIAL FOR ADVERSE EFFECT ON WILDLIFE RESOURCES;**

**AND**

**FIND PLN2003-00018 IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S EXISTING GENERAL PLAN. THESE PROVISIONS INCLUDE THE DESIGNATIONS, GOALS AND POLICIES SET FORTH IN THE GENERAL PLAN'S LAND USE, HOUSING CHAPTERS AS ENUMERATED WITHIN THE STAFF REPORT;**

**AND**

**RECOMMEND PLN2003-00018 TO THE CITY COUNCIL IN CONFORMANCE WITH EXHIBIT "A" (SITE, ARCHITECTURE, LANDSCAPE PLANS), EXHIBIT "B" (REZONING EXHIBIT), EXHIBIT "C" (PLANNED DISTRICT FINDINGS AND CONDITIONS OF APPROVAL).**

The motion carried by the following vote:

AYES:	7 – Harrison, King, Lydon, Natarajan, Sharma, Weaver, Wieckowski
NOES:	0
ABSTAIN:	0
ABSENT:	0
RECUSE:	0

- Item 4. DUMBARTON QUARRY – 9600 Quarry Road – (PLN2004-00008)** – to consider review for conformance to Conditional Use Permit U-66-53 to operate a quarry and asphalt production plant in the Northern Plains Planning District. EIR 76-6B and EIR 81-40 have analyzed impacts of the operation of the Quarry and no further environmental review is needed for this use permit review.

**Eric Hentschke**, Newark resident, questioned if conditions concerning noise generated by the plant or the odors or the hours of operation were being adhered to. He also questioned if the surety bond could be used to maintain the vegetation. He stated that the report had noted that the applicant had failed to meet their vegetation requirement and he wondered how the applicant would receive credit for the revegetation.

**Senior Planner Livermore** replied that the 1997 conditions did not set a specific noise threshold, because the work was performed 24 hours a day. The last time this use permit was up for review, staff received a number of concerns from neighbors and the applicant had voluntarily offered noise reduction techniques, such as strobe lights rather than a beeping sound when trucks were backing up. At this time, staff had not heard complaints of noise and odors. She offered to meet with the operator and express the speaker's concerns. She stated that when staff visited the site last summer, a certain type of vegetation was not doing well. Staff had suggested that a different plant be tried and she understood that was being attempted.

It was agreed that there was no condition concerning odors.

**Mr. Hentschke** stated that he was one of the people who had complained before and that the noise continued and could be heard during the summer in the early a.m. when the windows were open. He admitted that he was the closest house to the quarry and the noise probably disturbed him the most. He stated that it sounded almost like a large semi, diesel truck that

was idling all night long outside the house. He asked that pressure be applied to the applicant to reduce the noise, the odors and hours of operation. He stated that he and his neighbors had called Air Quality Control a number of times and nothing seemed to change, so they had, more or less, given up. He and his neighbors anticipated using the facility in the future when the operation ceased and a park was created. He asked that the City watch over the transition progress to make sure that it was a project of quality.

**Vice-Chairman Wieckowski** asked what was being done on the berm on the eastern side of the project concerning the revegetation. He understood that the quarry was to be closed in July 2007 and he asked what steps were planned to be taken between now and the closure date. How deep was the quarry and what would be done there during the next 39 months before closure? He asked for an update on the noise made by the crusher that the neighbors had complained about in the past. He wondered if as much asphalt was being used from this facility, given the local and state budgetary restraints. He suggested that a review be performed in January 2006, which would be eighteen months before the anticipated closure. He asked that staff diligently communicate to the applicant that the screening condition should be fulfilled, as he had expected to see seven year-old trees by this time. He asked for a clarification of the final reclamation plan and asked if the quarry-turned-lake would be filled with salt water or fresh water.

**Senior Planner Livermore** understood that replanting would be performed. East Bay Regional Park District had met with the applicant and, as July 2007 came nearer, staff would pay closer attention to the conditions. A grading plan had to be submitted to the city at least six months prior to closure. The 1997 Conditions of Approval consisted of 40 conditions that would have to be complied with. A State Mining and Reclamation Act (SMARA) expert was hired at the applicant's expense to look at the issues, and he was frequently consulted. The quarry was at 300 feet below sea level, which was as deep as was allowed. Material would continue to be harvested from the sides. She had no information about the noise from the crusher. She reiterated that no complaints had been received by staff concerning this review. She read one of the 1997 conditions that stated the Commission could establish reasonable limits on the hours of quarry operation, if deemed necessary. Speaking anecdotally, this was one of the few quarries located in the urbanized Bay Area and they needed to operate 24 hours to provide timely delivery to freeway and street repair projects that were performed at night. She stated that a draft reclamation plan was on the board behind him. She could not answer whether the lake would consist of salt or fresh water. She suggested rescheduling this item so that the applicant could be present to answer questions.

**Chairperson Weaver** closed the public hearing.

**Commissioner King** stated that he would not support the recommended action and asked for a continuance to allow the Commission to speak with the applicant.

**Commissioner Harrison** suggested that staff recommendation be approved with an additional condition that staff work with the applicant about the speaker's concerns.

**Commissioner King** stated that he was not aware of the history of this operator. However, he felt that the applicant should be present to receive comments directly from the Commission and he wanted to make certain that the applicant knew that the Commission took the neighbors' concerns seriously.

**Commissioner Lydon** asked if there were any consequences of postponing this action.

**Senior Planner Livermore** stated that there would be no consequences. The Commission's action tonight was to confirm that the applicant was in compliance with the use permit.

**Commissioner Lydon** feared there would be always one more question. Was there a way to make certain that only one more meeting would be needed to address the speaker's questions and concerns?

**Senior Planner Livermore** suggested that a date for a continuance be discussed with the applicant. A renote would give anyone who wished to speak a chance to do so.

**Commissioner Natarajan** asked if any of the conditions would change if the applicant were present to address these concerns or was that something that could be done by staff.

**Senior Planner Livermore** stated that the information available to the Commissioners would change. She agreed with Commissioner Harrison's comments. She stated that she had received many complaints during the last review, where this time, she received no complaints.

**Commissioner Natarajan** asked if the complaints had been addressed by the Planning Commission during the last review.

**Senior Planner Livermore** the complaints were clarified through information exchange.

**Commissioner Harrison** stated that the applicant was present to address the concerns during the last review. Staff had heard the speaker's concerns and they should be able to handle them.

**Commissioner Sharma** stated that if the neighborhood had given up, he believed that it was not a waste of time to continue this item to allow a renote and to have the applicant present.

**Chairperson Weaver** wondered if more people would attend than were here at this meeting with a renoting. If they did not respond to one notice, would they respond to a second?

**Commissioner King** asked what the Commission could do, if noise was still a problem and it seemed that the applicant had ignored that condition. Was the applicant in compliance?

**Commissioner Harrison** did not believe this item should be continued. There were no complaints at this time. He agreed that the applicant should work with the neighbors about the noise and odor. He encouraged everyone to think of the greater good and what the Tri Cities were getting at the end of this applicant's operation.

**Commissioner Lydon** asked how many residents had been noticed.

**Senior Planner Livermore** stated that 12 residents were noticed, which included people who were on the Interested Party List.

**Commissioner Lydon** asked how many people were on the list and how many were within the standard 300-foot noticing area.

**Senior Planner Livermore** stated that they were all within the 12 notices and that one or two property owners were within 300 feet of the applicant's property.

IT WAS MOVED (KING/WIECKOWSKI) AND FAILED BY THE FOLLOWING VOTE (3-4-0-0-0) THAT THE PLANNING COMMISSION CONTINUE TO THE NEXT MEETING.

The motion failed by the following vote:

AYES: 3 – King, Sharma, Wieckowski  
NOES: 4 – Harrison, Lydon, Natarajan, Weaver  
ABSTAIN: 0  
ABSENT: 0  
RECUSE: 0

IT WAS MOVED (HARRISON/NATARAJAN) AND CARRIED BY THE FOLLOWING VOTE (7-0-0-0) THAT THE PLANNING COMMISSION HOLD PUBLIC HEARING;

**AND**

**ADD A CONDITION THAT STAFF WORK WITH THE APPLICANT AND RESIDENTS ABOUT THEIR CONCERNS REGARDING ODOR, NOISE 24-HOUR CONTINUOUS OPERATION AND REVEGETATION;**

**AND**

**ADOPT MOTION FINDING DUMBARTON QUARRY AND THE ASPHALTIC CONCRETE PLANT OPERATION TO BE IN COMPLIANCE WITH CONDITIONS OF APPROVAL.**

The motion carried by the following vote:

AYES: 7 – Harrison, King, Lydon, Natarajan, Sharma, Weaver, Wieckowski  
NOES: 0  
ABSTAIN: 0  
ABSENT: 0  
RECUSE: 0

## **MISCELLANEOUS ITEMS**

Information from Commission and Staff:

- Information from staff: Staff will report on matters of interest.

**Interim Planning Director Schwob** stated that the updated elements for the General Plan were included in the Commissioners' packets. It was important that the Commissioners keep them and insert them into their copies of the General Plan.

**Interim Planning Director Schwob** stated that the City Council had decided reopen a discussion at this time concerning the Big Box ordinance.

**Commissioner Natarajan** asked if the Bay Area Council Report was available.

**Interim Planning Director Schwob** promised to provide it as an informational item.

- Information from Commission: Commission members may report on matters of interest.

**Chairperson Weaver** asked the dates of the Planners Institute.

The Planners Institute would be held on Wednesday, and Thursday and Friday, March 31<sup>st</sup>, April 1<sup>st</sup> and 2<sup>nd</sup>.

**Commissioner Natarajan** asked for an update and the scope of the CBD Capital Avenue Developer Selection that was heard by the City Council.

**Interim Planning Director Schwob** stated that the City Council had selected a developer team to pursue the Capital Avenue Downtown area development. The team would work with staff over the next several months to develop a project in that area, which would involve several of the property owners, including the City. The site would include State Street to Fremont Boulevard and from Mowry Avenue to Gaslight Square, excluding the office buildings along Beacon.

**Commissioner Sharma** read a letter received from a person who wished to become a City resident that, essentially, stated he was not able to find appropriate housing for his family within the 500,000-dollar range. A home in a good school district within the City currently cost approximately 700,000 dollars. Commissioner Sharma sympathized with young professionals who could not afford to live in the City. This was the reason he objected to the word “affordable.” A three or four hundred thousand-dollar home was not affordable, even if it was priced below the market value. Hopefully, the surrounding neighbors would not object quite so strenuously when a high density, “affordable” (or, preferably, a “below market”) project was considered for their neighborhoods.

**Chairperson Weaver** stated that the inclusionary ordinance was named “Affordable Housing.” Usually, when people spoke of affordable housing, they were speaking of an apartment or a condominium, rather than a single-family dwelling, which is how a young family generally started.

A discussion ensued about the meaning of affordable housing and how it was used in today’s housing market.

Meeting adjourned at 9:20 p.m.

SUBMITTED BY:

Alice Malotte  
Recording Clerk

APPROVED BY:

Jeff Schwob, Secretary  
Planning Commission